IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 274/2006

1. Mrs. Ana Maria Souza e Gurjao,
wife of late Albino Gurjao (deceased)
represented through legal heirs:

2. Mr. Gaspar Gajrao,
son of Albino Gurjao, both permanent
residents of H.No.37, Dandi, Agassaim,
Ilhas, Goa and presently residing at
30 Parc Courtilliers 93500 Pantin,
France through their Power of Attorney
Smt. Perpetua Marques,
resident of H.No.858,
Morgerdo Goa Velha, Ilhas, Goa.

3. Romald Gurjao,
son of Albino Gurjao
Permanent resident of H.No.37,
Parc Courtilliders 03500 Patin Paris. ..... Petitioners.

V/s.

1. Mr. Vitorino Gurjao
son of Lourenco Gurjao,

2. Mrs. Lalita Gurjao,
wife of Vitorino Gurjao,
both residing at Pedda,
Ambelim, Assolna, Salcete, Goa.

3. The Village Panchayat,
St. Lawrence Agassaim, Ilhas, Goa. ..... Respondents.

Mr. Roghit Bras de Sa, Advocate for the petitioners.

Mr. J. Godinho, Advocate for the respondents.

CORAM : S. A. BOBDE, J.

DATE : APRIL 5, 2007.

ORAL JUDGMENT :

Rule, returnable forthwith. Heard by consent.

2. The petitioners have challenged the order of the learned Civil Judge, Jr. Division, Panaji in Regular Civil Suit No.21/2000/C dated 24.2.2006, by which the learned Civil Judge has refused to delete the issue No.9. Issue No.9 reads as follows :

> " Whether the defendants prove that their late mother, Natalina was residing in the suit house along with her family as mundkar thereof and that deed of sale effected in favour of plaintiffs is not binding on defendants ?"

3. The petitioners who are the plaintiffs, filed a suit for recovery of possession of the suit house from the defendants. The defendants have pleaded that they are the *mundkars* in respect of the suit house, having been granted mundkarship by the earlier owners namely Berta Marilia Rosura Dias e Miranda and others who were the *bhatkars*. After written statement was filed, the learned Civil Judge appears to have put the civil suit in sine die list, admittedly, without referring the issue of mundkarship to the appropriate authority as required under the provisions of the Goa Mundkars (Protection

from Eviction) Act, 1975, particularly Sections 31 and 32 of the Act. Sections 31 and 32 of the Act, read as follows :

> " *31. Protection of action taken under the Act and bar of jurisdiction of Courts.* - (1) No suit, prosecution or other legal proceeding shall lie against any officer for anything in good faith, done or intended to be done under this Act.
>
> (2) No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined, by the Mamlatdar or the Collector or the Government or the Administrative Tribunal and no order passed by such authority under this Act shall be questioned in any Civil or Criminal Court.
>
> *32. Suits involving issues required to be decided under this Act.* - (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by the Mamlatdar or the Collector under this Act the Civil Court shall stay the suit and refer such issues to the Mamlatdar or the Collector shall stay the suit and refer such issues to the Mamlatdar or the Collector, as the case may be, for determination.
>
> (2) On receipt of such reference from the Civil Court, the Mamlatdar or the Collector shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate his decisions to the Civil Court

and such Court shall thereupon decide the suit in accordance with the procedure applicable thereof."

4. It is obvious from Section 32 of the Act that the Civil Court is required to stay the suit and further refer such issues to the Mamlatdar or the Collector as the case may be for determining the issue of mundkarship. This having not been done, it is difficult to see how the matter was put in the sine die list.

5. Having regard to the controversy involved in this suit, there is no error of law apparent on the face of the record in respect of the order of the learned Civil Judge, refusing to delete issue No.9. Hence, there is no merit in the prayer of the petitioners in that regard. Rule is disposed of with a direction that the Civil Court shall forthwith refer the issue of mundkarship to the appropriate authority under Section 32 of the Act.

S.A. BOBDE, J.

ssm.